

§ 716.16

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insur-

12 CFR Ch. VII (1–1–02 Edition)

ance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 716.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 716.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 716.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the National Credit Union Administration, on the Federal Trade Commission's own motion or upon the petition of any interested party.

§ 718.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the National Credit Union Administration Board has extended the time for compliance with this part until July 1, 2001.

National Credit Union Administration

Pt. 716, App. A

(b)(1) *Notice requirement for consumers who were your members on the compliance date.* By July 1, 2001, you must provide an initial notice, as required by §716.4, to consumers who are your members on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your members on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new members and have mailed the initial notice to all your existing members.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of §716.13(a)(2) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the agreement was entered into on or before July 1, 2000.

APPENDIX A TO PART 716—SAMPLE CLAUSES

Credit unions, including a group of affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice.

A-1—Categories of information you collect (all credit unions)

You may use this clause, as applicable, to meet the requirement of §716.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2—Categories of information you disclose (credit unions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of §716.6(a)(2) to describe the categories of nonpublic personal information you disclose. These clauses may be used if you disclose nonpublic personal information other than as per-

mitted by the exceptions in §§716.13, 716.14, and 716.15.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as “your name, address, social security number, assets, and income”*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as “your creditworthiness and credit history”*].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as “above” or “below”*].

A-3—Categories of information you disclose and parties to whom you disclose (credit unions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of §716.6(a)(2), (3) and (4) to describe the categories of nonpublic personal information about members and former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. This clause may be used if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§716.14, and 716.15.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our members and former members to anyone, except as permitted by law.

A-4—Categories of parties to whom you disclose (credit unions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of §716.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. This clause may be used if you disclose nonpublic personal information other than as permitted by the exceptions in §§716.13, 716.14, and 716.15, as well as when permitted by the exceptions in §§716.14, and 716.15.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “mortgage bankers, securities broker-dealers, and insurance agents”];

- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and

- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of §716.6(a)(5) related to the exception for service providers and joint marketers in §716.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, and income”];

- Information about your transactions with us, our affiliates, or others, such as [provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (credit unions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of §716.6(a)(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. This clause may be used if you disclose nonpublic personal information other than as per-

mitted by the exceptions in §§716.13, 716.14, and 716.15.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)"].

A-7—Confidentiality and security (all credit unions)

You may use this clause, as applicable, to meet the requirement of §716.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

PART 721—INCIDENTAL POWERS

Sec.

721.1 What does this part cover?

721.2 What is an incidental powers activity?

721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union’s business?

721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union’s incidental powers?

721.5 What limitations apply to a credit union engaging in activities approved under this part?

721.6 May a credit union derive income from activities approved under this part?

721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

AUTHORITY: 12 U.S.C. 1757(17), 1766 and 1789.

SOURCE: 66 FR 40857, Aug. 6, 2001, unless otherwise noted.

§ 721.1 What does this part cover?

This part authorizes a federal credit union (you) to engage in activities incidental to your business as set out in